

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
SCOTT PELLEGRINO, on behalf of himself and all  
others similarly situated; and CHRISTINE VAN OSTRAND  
on behalf of herself and all others similarly situated,

Plaintiffs,

- against -

NEW YORK STATE UNITED TEACHERS; UNITED  
TEACHERS OF NORTHPORT, as representative of the  
class of all chapters and affiliates of New York State  
United Teachers; NORTHPORT-EAST NORTHPORT  
UNION FREE SCHOOL DISTRICT, as representative  
of the class of all school districts in the State of New York;  
ANDREW CUOMO, in his official capacity as governor  
of New York; LETITIA JAMES, in her official capacity  
as Attorney General of New York;<sup>1</sup> JOHN WIRENIUS,  
in his official capacity as chair of the New York Public  
Employment Relations Board; ROBERT HITE, in his  
official capacity as member of the New York Public  
Employment Relations Board,

Defendants.

**NOTICE OF MOTION  
TO DISMISS**

Docket No.:  
2:18-cv-03439-JMA-GRB

-----X  
**PLEASE TAKE NOTICE** that upon Plaintiffs' Complaint, dated June 13, 2018, and the  
accompanying Memorandum of Law and Declaration of Robert E. Morelli, Esq., with annexed  
exhibits, Defendants ANDREW CUOMO, in his official capacity as governor of New York;  
LETITIA JAMES, in her official capacity as Attorney General of New York; JOHN  
WIRENIUS, in his official capacity as chair of the New York Public Employment Relations  
Board; and ROBERT HITE, in his official capacity as member of the New York Public  
Employment Relations Board, shall move this Court before the Honorable Joan M. Azrack,  
United States District Court Judge, United States District Court, Eastern District of New York;

---

<sup>1</sup> Pursuant to F.R.C.P. 25(d), current New York State Attorney General Letitia James has been  
automatically substituted for former Attorney General Barbara Underwood, as Underwood's tenure as Attorney  
General ended on January 1, 2019.

100 Federal Plaza, Central Islip, New York, for an order pursuant to Rule 12(b)(1) and Rule 12(b)(6) of the Federal Rules of Civil Procedure dismissing the Complaint as to these Defendants based on a lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted and for such further relief as may be proper.

Dated: Hauppauge, New York  
January 18, 2019

By:



ROBERT E. MORELLI, Esq.  
Assistant Attorney General  
300 Motor Parkway, Suite 230  
Hauppauge, New York 11788

To: All Counsel of Record for Plaintiffs  
& Co-Defendants via E-mail,  
UPS Overnight and ECF

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF SUFFOLK )

EVELYN ORELLANA, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and is employed in the office of LETITIA JAMES, Attorney General of the State of New York, attorney for defendant. On January 18, 2019, she served a copy of the enclosed Notice of Motion to Dismiss upon the following named persons:

PAUL R. NIEHAUS  
Kirsch & Niehaus  
150 East 58<sup>th</sup> Street  
22<sup>nd</sup> Floor  
New York, New York 10155

JONATHAN F. MITCHELL  
Mitchell Law PLLC  
106 East Sixth Street  
Suite 900  
Austin, Texas 78701

ATTN: DINA KOLKER  
Stroock & Stroock & Lavan LLP  
180 Maiden Lane  
New York, New York 10038

ATTN: DAVID F. KWEE  
Ingerman Smith, LLP  
150 Motor Parkway, Suite 400  
Hauppauge, New York 11788

the addresses designated by said persons for that purpose by UPS Overnight Mail.

  
EVELYN ORELLANA

Sworn to before me this  
18th day of January, 2019

  
ROBERT MORELLI  
Assistant Attorney General